

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

JUSTIN E. BARTLEY,

Plaintiff,

vs.

**Civil Action No. 2:04 CV 39
(Maxwell)**

**JO ANNE B. BARNHART,
COMMISSIONER OF
SOCIAL SECURITY,**

Defendant.

ORDER

By Order entered November 3, 2004 (Docket No. 14), the Court referred the cross-motions for summary judgment filed in the above-styled Social Security action to United States Magistrate Judge James E. Seibert, pursuant to 28 U.S.C. § 636(b)(1)(B); Rule 72 of the Federal Rules of Civil Procedure; and Rule 7.02(c) of the Local Rules of Civil Procedure, with directions to consider the same and to submit to the Court proposed findings of fact and a recommendation for disposition.

On April 28, 2005, Magistrate Judge Seibert filed his Report And Recommendation (Docket No. 15) wherein the parties were directed, in accordance with 28 U.S.C. §636(b)(1) and Rule 6(e) of the Federal Rules of Civil Procedure, to file any written objections thereto with the Clerk of Court within ten (10) days after being served with a copy of said Report And Recommendation. Magistrate Judge Seibert's Report And Recommendation expressly provided that a failure to timely file objections would result in waiver of the right to appeal from a judgment of this Court based thereon.

On May 6, 2005, the Plaintiff's Objections to Magistrate Seibert's Report And Recommendation (Docket No. 16) were filed with the Court.

Upon consideration of the Plaintiff's Objections to Magistrate Seibert's Report And Recommendation, it appears to the Court that the Plaintiff has not raised any issues that were not thoroughly considered by Magistrate Judge Seibert in his Report And Recommendation. Moreover, the Court, upon an independent *de novo* consideration of all matters now before it, is of the opinion that the Report And Recommendation accurately reflects the law applicable to the facts and circumstances before the Court in this action.

Therefore, it is

ORDERED that Magistrate Judge Seibert's Report And Recommendation (Docket No. 15) be, and is hereby, **ACCEPTED** in whole and that this civil action be disposed of in accordance with the recommendation of the Magistrate Judge. Accordingly,

1. The Defendant's Motion For Summary Judgment (Docket No. 12) is **GRANTED**;
2. The Plaintiff's Motion For Summary Judgment (Docket No. 10) is **DENIED**;
3. The above-styled civil action is **DISMISSED** and **RETIRED** from the docket of this Court.

The Clerk of Court is directed to transmit copies of this Order and the Judgment Order to counsel of record.

ENTER: September 28, 2005

/s/ Robert E. Maxwell
United States District Judge